

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A GROUND-  
WATER WITHDRAWAL PERMIT  
ISSUED BY THE STATE OF  
WASHINGTON, DEPARTMENT OF  
ECOLOGY TO JOHN AND MARY  
WILLIAMS

FRANK H. BROWNELL, III,  
LORETTA M. POLLMAR, ALBERT  
M. POLLMAR and CHARLES H.  
POLLMAR,

Appellants,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY and  
JOHN AND MARY WILLIAMS,

Respondents.

PCHB Nos. 78-197 and 78-200  
FINAL  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a groundwater withdrawal permit issued  
by the Department of Ecology, came on for hearing before the Pollution  
Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith, Member,  
and David Akana, Member, convened at Seattle, Washington, on

1 December 21, 1978. Hearing examiner William A. Harrison presided.

2 Respondent elected a formal hearing pursuant to RCW 43.21B.230.

3 Appellant, Frank H. Brownell, III, appeared by Rule Nine Intern,  
4 Michael McCormack. Appellants, Pollmars, appeared by their attorney,  
5 Derrill T. Bastian. Respondent, Department of Ecology, appeared by  
6 Robert E. Mack, Assistant Attorney General. Respondents, Williamses,  
7 appeared by their attorney, Ronald S. Ripley. Reporter Susan Cookman  
8 recorded the proceedings.

9 Witnesses were sworn and testified. Exhibits were examined. From  
10 testimony heard and exhibits examined, the Pollution Control Hearings  
11 Board makes these

12 FINDINGS OF FACT

13 I

14 The permit in this case concerns a well located in the South Beach  
15 area of Bainbridge Island. On the upland portion of what is known as  
16 "Tract 24 of South Beach 5 Acre Tracts", there are two hand dug wells,  
17 constructed many years ago to supply some of the domestic water needs  
18 of nearby beach front residents.

19 In July, 1961, one Ernest G. Biggs and wife, executed a deed  
20 reciting that they owned the part of Tract 24 containing the wells.  
21 This deed conveyed to three other couples, as owners of nearby beach front  
22 an undivided one-fifth (1/5) interest in said wells together with  
23 certain easements. The remaining two fifths (2/5) interest in the  
24 wells were reserved by Biggs.

25 II

26 In 1967, a public water system to serve the homes in this area  
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1 was installed. Existing homes concerned in this appeal obtain  
2 domestic water from that public water supply or wells other than those  
3 on Tract 24. The State Department of Social and Health Services has  
4 advised the local health district to deny further building permits  
5 for connections to the public water system pending upgrading of the  
6 system. The use of the Tract 24 wells was discontinued in 1967 except  
7 for one resident who watered his small garden and washed his car in the  
8 summer of 1976 with water drawn from the wells. Although the Tract 24  
9 wells have been cited as useful for protection from fire, such use is  
10 speculative and remote. There is no cleared approach to the wells which  
11 a fire truck could use and the nearby waters of Puget Sound provide an  
12 inexhaustible source of water for fire protection of the beach front  
13 homes.

### 14 III

15 On October 18, 1976, respondents, Williamses, applied to respondent,  
16 Department of Ecology (DOE), for a permit to withdraw groundwater from  
17 the two Tract 24 wells. This is the first occasion that anyone seeking  
18 to withdraw water from the wells has sought such a written permit. The  
19 water withdrawn would be used for domestic purposes, namely, to supply  
20 water to a house which the Williamses plan to construct on their beach  
21 front property in Tract 25.

22 Upon receipt of the application, DOE conducted field investigations  
23 of the Tract 24 wells and found each to be approximately 30 feet deep  
24 and 3 feet across. The distance from land surface downward to the static  
25 water level is 23 feet in one well and 25 feet in the other, which  
26 results in approximately 600 gallons of standing water.

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1 On July 10, 1978, DOE ordered that a groundwater withdrawal permit  
2 be granted to respondents, Williamses, for "Single Domestic Supply," at  
3 5 gallons per minute to a maximum of 2 acre-feet per year, from the  
4 Tract 24 wells.

5 This matter is a consolidation of two appeals from that DOE order.  
6 One appeal is taken by Brownell, present owner of that portion of  
7 Tract 24 containing the wells. The other is taken by the Pollmars who  
8 own and reside upon beach property adjacent to the site where the  
9 Williamses plan to locate the house which would be served by the ground-  
10 water permit in question.

11 IV

12 Any Conclusion of Law which should be deemed a Finding of Fact is  
13 hereby adopted as such.

14 From these Findings, the Pollution Control Hearings Board comes  
15 to these

16 CONCLUSIONS OF LAW

17 I

18 Before DOE may issue a permit authorizing the withdrawal of public  
19 groundwater, it must, under RCW 90.44.060, make the four findings set  
20 out in RCW 90.03.290 which are that:

- 21 (1) water is available  
22 (2) for a beneficial use  
23 (3) the appropriation proposed will not impair existing rights  
24 (4) the appropriation proposed will not be detrimental to the  
25 public welfare.

26 The parties have placed in issue the questions of water availability,  
27 impairment of existing rights, detriment to public welfare and the  
28 additional question of whether DOE should require that well works

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1 | pertinent to the subject permit be located off of the Brownell property.

2 | II

3 | Water Availability. We conclude that groundwater is available at  
4 | the given points of withdrawal in Tract 24. The quantity of water which  
5 | DOE authorized for withdrawal has not been shown to be unavailable from  
6 | the groundwater body beneath the two points of withdrawal. However, a  
7 | groundwater permit is not a promise that the given quantity of  
8 | water will be found in fact.

9 | III

10 | Impairment of Existing Rights. Appellants and others claim  
11 | existing rights to withdraw public groundwater from the Tract 24 wells.  
12 | None of these claimed rights is embodied in a written permit or  
13 | certificate issued under the Public Groundwater Code (see RCW 90.44.060  
14 | to 90.44.080). While it is possible that such claimed rights might  
15 | exist without a written permit or certificate (see, e.g., RCW 90.44.050),  
16 | we need not ascertain the validity of these claimed rights. There  
17 | are no present, material withdrawals being made from the Tract 24  
18 | wells which respondents, Williamses', withdrawals could curtail or  
19 | lessen. Hence, there would be no rights impaired. Under these facts,  
20 | DOE was not required to establish a range of pumping lifts for the area  
21 | under RCW 90.44.070.

22 | IV

23 | Public Welfare.

24 | A. Access to the Point of Diversion and Equipment Placement. The  
25 | DOE action authorizes the Williamses to withdraw public groundwater  
26 | at a given, geographic point of diversion. It does not authorize

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1 access to that point over the private land of another nor does  
2 it authorize the placement of any pumping or other equipment  
3 on the private land of another. These latter issues of access or  
4 equipment placement are inherently private matters to be resolved by  
5 private action or agreement. The "public welfare" requirement of  
6 RCW 90.03.290, supra, does not require that DOE resolve such questions  
7 prior to approving a permit for withdrawal of public groundwater.

8 B. Other State and Local Law. Appellants, Pollmars, urge that

9 . . . an investigation of the public welfare issues involved  
10 would of necessity include a demonstration that issuance of the  
11 permit would not facilitate or encourage violation of existing  
12 state and county health, zoning and planning ordinances which  
13 are enacted for the purposes of promoting and maintaining the  
14 public health safety and general welfare. This investigation  
15 and consideration would certainly include the Shoreline Manage-  
16 ment Act and all its provisions. (Appellants Pollmars' Argument  
17 and Brief on Appeal, p. 6, lines 26-33.)

18 We disagree. Each of the provisions of state and local law broadly  
19 referred to by appellants involves scrutiny by another state or local  
20 agency, often combined with a permit approval process. We do not read  
21 the "public welfare" clause of the Water Code so expansively as to  
22 require that DOE duplicate or preempt the functions accorded to other  
23 state or local agencies nor that DOE withhold its permit until all  
24 such other agencies have acted.

25 V

26 Summary. Prior to approving this groundwater permit, DOE correctly  
27 made each of the findings challenged in this appeal, and its permit  
28 approval should be affirmed.

29 VI

30 Any Finding of Fact which should be deemed a Conclusion of Law is  
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1 hereby adopted as such.

2 From these Conclusions, the Board enters this

3 ORDER


4 The decision of the Department of Ecology approving a permit to  
5 withdraw public groundwater, dated July 10, 1978, is hereby affirmed.

6 DONE this 20<sup>th</sup> day of March, 1979.

7 POLLUTION CONTROL HEARINGS BOARD

8   
9 DAVE J. MOONEY, Chairman

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11 CHRIS SMITH, Member

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13 DAVID A. AKANA, JR., Member

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